

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 13,502

)

Appeal of )

)

INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare reducing her ANFC grant by removing her husband's needs from the grant for a three month sanction period for her husband's failure to participate in the Reach Up program. The issue is whether her husband, C.J., refused to participate in Reach Up within the meaning of the pertinent regulations.

FINDINGS OF FACT

1. C.J. lives with his wife and three children in a mobile home park and receives ANFC based on his status as an unemployed parent. He has no car, driver's license or telephone and his home is located about five miles from the post office, DSW district office and the courthouse. He is about two miles from the local office of the Department of Employment Security. He relies on friends and neighbors for transportation and the use of the telephone.
2. C.J. does not dispute that he meets the definition of persons required to participate in the Reach Up program. He has had some difficulty in the past with meeting the requirements of the program. He was sanctioned for two months for refusal to cooperate in February of 1994. After that experience he requested a new worker and got one in June of 1994. He was threatened with sanction in August of 1994 but was able to resolve that threat through conciliation. In September of 1994, C.J. was hospitalized for an emotional disturbance. Thereafter he enrolled in an accounting course at the community college some eight miles away which he attended with the help of a DET provided taxi service. He stopped going to classes and was unable to complete that program. In November of 1994, his worker solicited a medical report which indicated that C.J. was being treated for an adjustment disorder with mixed emotional features but that his illness would not affect his class attendance or actual work training.
3. In December of 1994, C.J. got a new Reach Up worker who drew up a new employability plan with him which was signed on December 6th. As part of that plan, C.J. agreed to search for work for twenty hours per week, to contact mental health for counseling and to meet with his Reach Up caseworker

every Thursday morning at 9:30 A.M. at the Department of Employment Security office. He was advised that he could get reimbursement for any transportation he needed for a work search but that he could not get preapproved blanket guaranteed service, such as a taxi, due to budget constraints. Regular transportation services could only be provided for classes or for work sites, not for a job search. C.J. agreed to the plan and said he would do the best he could.

4. C.J. did not do a work search or come for his Thursday morning meetings pursuant to that plan. On December 19, 1994, his caseworker sent him a letter setting up a meeting to discuss his failure to comply with the program for December 29, 1994 at the DET office. The letter was sent by certified mail dated December 20, 1994.

5. C.J. did not attend the conciliation meeting on December 29 and was sent another letter on December 30, 1994 telling him that a second meeting was scheduled on January 6, 1995 at DET. The letter was sent by certified mail dated December 30, 1994.

6. C.J. did not attend the January 6 meeting either. In response, his Reach Up case manager notified DSW on January 9, 1995 that C.J. had failed to attend either meeting and should be sanctioned for three months.

7. Both notices sent by DET explained to C.J. what the conciliation process was and warned him that his failure to appear for two conciliation conferences would result in his needs being removed from the ANFC grant.

8. C.J. did not in fact receive either of the meeting letters although he received at least two notices from the post office that he had mail from DET for each letter. Those letters were returned to DET as unclaimed on January 6, 1995 and January 15, 1995.

9. The Reach Up worker testified that she got no response to either letter either by telephone or in writing. Prior to December of 1994, she and C.J. had regular contact even though he did not have a car or phone through leaving and returning messages. On at least one occasion prior to December, C.J. walked to the office to keep an appointment. She states that she has not seen nor had any communication with C.J. since the employability plan was prepared on December 6, 1994. There is nothing in his file which would confirm that he had left any messages for his worker. If she had received a message, the worker would have driven to his home to talk with him. She states she also would have arranged for community services to provide transportation to the office if he had a problem. She believes that the petitioner knew that he could make that request. She remembers driving to his home on one occasion to talk with him but he was not at home. The DET worker says she could also have given him a temporary waiver for a family illness if he had so requested. Since mid-January, the DET case manager has been assisting the petitioner herself with an employability plan since she is now in the Reach Up program.

10. C.J. claims that he called DET on several occasions between December 12 and 22, 1994, to report his inability to attend weekly meetings although he was unable to speak with his worker on any occasion. He estimated that he left five to seven messages and on one occasion spoke with his prior Reach Up worker. That former worker testified that she does not remember such contact. The petitioner stated that he even waited for hours on one occasion next to a message phone for a return call which never came. C.J. was aware that he had certified mail from DET at the post office and based on his past experience he thought they were probably conciliation meeting notices. He claims that he "sent his wife" to pick them up but she couldn't sign. He states that he could not pick up the letters himself because he

had no transportation to the post office.

11. C.J. claims that he was unable to participate in any of his Reach Up activities due to his "disabilities", due to the illness of both grandfathers and his father in December and due to transportation problems. He presented no evidence of either the "disabilities" or the illnesses.

12. On January 17, 1995, DSW notified the petitioner that her grant would decrease as of February 1, 1995 from \$785 to \$697 based on C.J.'s refusal to cooperate with Reach Up and that the decrease would continue through April 30, 1995. She was also advised that the grant would be restored if C.J. cooperated with Reach Up at the end of the sanction period.

13. On December 12, 19, 20 and 27, 1994, C.J. was present at the city courthouse, which is a block from the post office, for proceedings in a criminal matter against him. He was transported there through an allotment from the Court. He also goes shopping downtown through the generosity of friends who drive five miles to pick him up and take him into town. His three small children go to doctor's appointment through the local community action network transportation.

14. C.J. claims that he asked friends to drive him to both the post office and to DET to pick up mail and attend meetings but they were too busy to do so. He currently has a community service job which he must attend pursuant to a court order to which he walks everyday. He says that he has walked as much as five miles each way to attend employment.

15. The petitioner testified that she believed her husband had tried to call the office and pick up the notices. However, her testimony was entirely based upon what C.J. had told her and not upon any independent observation or knowledge.

16. C.J.'s statements recounted in paragraphs ten, eleven and fourteen regarding his attempts to communicate with his DET worker and to get his mail are rejected as lacking in credibility. C.J.'s claims that he could not manage to pick up any mail, talk to his worker on the phone or manage to get to the DET office on even one occasion over a month long period strains credulity. His testimony was particularly difficult to believe because during the same period of time he managed to make several trips downtown (a locale even farther than the DET office), was on four occasions within a block of the post office and could offer no explanation as to why he just didn't walk down to the DET office. It must be concluded from his testimony that C.J. deliberately avoided picking up his mail and contacting his DET worker following his December 6, 1994 meeting with her.

17. Allegations made by C.J.'s worker regarding the lack of contact from C.J. in December 1994 and January 1995 are found to be entirely credible.

### ORDER

The decision of the Department sanctioning the petitioner's grant is affirmed.

### REASONS

There is no question here that the petitioner's husband is required to participate in the Reach Up program as a condition of his eligibility for ANFC. The regulations find that a participant has engaged in a "de

facto refusal" to cooperate with Reach Up if he fails without good cause to "show up for a program interview or appointment." W.A.M. 2349.4. In that case, the regulations require the commencement of a process as outlined below:

When the failure or refusal is implied (de facto) by an individual's failure without good cause to fulfill one or more of the above standards, the Reach Up case manager may attempt to contact the individual and discuss the act or pattern of behavior in question. If the individual fails to cooperate or fails to meet good cause criteria, the conciliation process begins.

#### W.A.M. 2349.4

The Reach Up program has a conciliation process to resolve disputes related to an individual's participation . . . Either the participant or the Reach Up case manager initiates the conciliation process. The conciliation effort must begin as soon as possible but no later than ten calendar days following . . . failure or refusal to accept or continue participation . . . The conciliation period lasts for no more than 15 consecutive calendar days.

. . .

The participant must be notified in writing of the reason(s) for the determination of . . . failure or refusal to accept or continue participation . . . without good cause, a description of the conciliation process, the right to have a representative present at the conciliation conference, and the period of ineligibility that will be imposed if conciliation is unsuccessful.

The conciliation conference is a fact-finding session during which Reach Up program representatives and the participant explore ways in which the participant may satisfy Reach Up requirements. Any extenuating circumstances hindering compliance with program policies and procedures will be reviewed.

Failure without good cause to appear for two scheduled conciliation conferences results in automatic imposition of the applicable sanction.

#### . . . W.A.M. 2350

Conciliation shall be determined unsuccessful when:

. . .

(2) The participant does not respond to two written notices of scheduled interviews which have been sent to him or her at least ten (10) days apart.

. . .

When conciliation is unsuccessful, the Reach Up case manager sends a Notice of Sanction which includes a description of the applicable sanction(s) to the Eligibility Specialist.

The eligibility Specialist completes the actions necessary to apply the sanction (i.e. removal of needs

and/or vendor payments).

W.A.M. 2350.2

The petitioner does not argue that the process used by the Department was outside of the time frames or other requirements in the regulations. It does appear that once C.J. failed to attend his first weekly meeting he was found to have refused on a "de facto" basis to cooperate with his Reach Up requirements. Within ten days of that refusal, a notice was mailed to him for a conciliation meeting. When he failed to attend that meeting, a second notice was sent to him ten days later for a second meeting, which he also failed to attend. Under the regulations, failure to attend the two meetings results in an automatic sanction unless good cause is shown.

While the petitioner may or may not have "good cause" for cooperating with his employability plan, he certainly did not show "good cause" for failing to attend his conciliation meeting. His own deliberate avoidance of both the post office and the DET office could never meet any definition of good cause. The evidence clearly shows C.J., based on his prior experience, very likely knew there were conciliation letters waiting for him at the post office and that he would probably face a sanction if he ignored those letters. Yet he chose to ignore them and to completely avoid the DET office for over a month.

C.J. does have the right to show "good cause" for not complying with his employability plan. W.A.M. 2349. He may have valid concerns and evidence to present on that issue. However, the time and the place to present that information was at his conciliation meeting. He would be better advised to take that opportunity to work things out with DET and appeal if he is dissatisfied rather than hide out from his obligations and risk sanctions. Since he did not attend the two conciliation meetings and has offered no reasonable excuse for his failure, he must be sanctioned. As this is his second sanctioned occurrence, the Department correctly removed his needs from the grant for a mandatory three month period. See W.A.M. § 2351.1. Therefore, the decision of the Department must be affirmed. 3 V.S.A. § 3091(d).

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